

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

DEC 18 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ROBERT GONZALES,

Plaintiff - Appellant,

v.

UNIVERSITY OF CALIFORNIA,
IRVINE; et al.,

Defendants - Appellees.

No. 24-4151

D.C. No.

8:23-cv-01788-JVS-KES

Central District of California,
Santa Ana

ORDER

Before: S.R. THOMAS, SILVERMAN, and TALLMAN, Circuit Judges.

On May 7, 2024, the district court entered an order granting a motion to dismiss the first amended complaint without prejudice and denying motions for a temporary restraining order. Although the district court docket entry for the May 7, 2024 order indicated that the case was terminated, the order evidenced an intent to permit appellant to amend the complaint, and the district court did not enter judgment on a separate document pursuant to Federal Rule of Civil Procedure 58. Appellant filed a second amended complaint in the district court on July 2, 2024. Appellant also filed a notice of appeal of the May 7, 2024 order on July 5, 2024.

After the notice of appeal was filed, the district court entered an order on September 30, 2024 granting appellees' motion to dismiss the second amended complaint. The district court's September 30, 2024 order permitted appellant

further leave to amend the complaint, stating that “the Court finds that at this time, dismissal of this claim without leave to amend is not yet appropriate.”

Because the district court’s May 7, 2024 order permitted appellant leave to amend and the district court entertained the second amended complaint, this appeal of the May 7, 2024 order is dismissed for lack of jurisdiction. *See WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (“[A] plaintiff, who has been given leave to amend, may not file a notice of appeal simply because he does not choose to file an amended complaint.” *Id.* “A final judgment must be obtained before the case becomes appealable.” *Id.* at 1137.); *see also Religious Tech. Ctr. v. Scott*, 869 F.2d 1306 (9th Cir. 1989) (denial of temporary restraining order is appealable only if the denial is tantamount to the denial of a preliminary injunction).

Appellant filed a third amended complaint in the district court on October 27, 2024, which remains pending.

DISMISSED.